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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,338	12/05/2000	Michael S. Murstein	MS154757.1	8129

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EXAMINER

NGHIEM, MICHAEL P

ART UNIT PAPER NUMBER

2863

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/730,338

Applicant(s)

MURSTEIN ET AL.

Examiner

Michael P Nghiem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9-21, 26-33, 35, 36, 38 and 39 is/are rejected.
- 7) ☒ Claim(s) 5, 8, 22-25, 34 and 37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restriction***

1. The restriction requirement filed on June 13, 2003 is withdrawn in response to Applicant's traversal filed on July 14, 2003.

### ***Claim Objections***

2. Claims 28, 29 and 38 are objected to because of the following informalities:

- claims 28, 29, after "step" (line 1) should insert -- of --.
- claim 38, "if at least one larger time period and resolution" (lines 6-7) is unclear.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 9-21, 26-33, 35, 36, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Koenig (US 5,923,874).

Koenig discloses all the claimed features of the invention including:

- a performance system and method of monitoring performance (Fig. 1) for a plurality of members (20's) configured as an entity (Fig. 1), comprising:

- a performance monitor system (10) for each of the plurality of members, the performance monitoring system monitoring member specific metrics (performance data stored in 40, 60, 70, 80);

- a first computer (20a) having a gathering and aggregation system (including 55, 90, 120) adapted to gather performance metric data from the plurality of members and aggregate the performance metric data into a unified result set (90, Fig. 1);

- each of the plurality of members have a gathering and aggregation system (55) such that the unified result set can be gathered and aggregated from any of the plurality of members (column 7, lines 29-34);

- the performance monitor system for each of the plurality of members employing a time aggregation component adapted to aggregate member specific metrics over time (column 7, lines 20-34);

- the time aggregation component being further operable to aggregate member specific performance metrics data into data, of larger time periods and larger resolutions (column 7, lines 29-33);

- the performance gathering, and aggregation system further comprising a performance entity aggregation component (55) adapted to gather and aggregate performance metric data values of a particular time period and resolution (column 7, lines 2-34) from the plurality of members based on a time period and time resolution requested by a requestor (170);

- the performance entity aggregation component being operable to aggregate data performance values having similar data times (sample time can be specified, column 7, line 29) to form a unified result set over the particular time period and time resolution;

- the plurality of members logging member specific operational metrics to a data store (40, 60, 70, 80) corresponding to that particular member;

- the gathering and aggregation system being further adapted to receive a request from a requestor (170) for operational metric information for the entity and return the unified result set back to the requestor (Fig. 4);

- the requestor being one of an external process, an internal process, an external consumer, a user interface and another entity (Fig. 4);

- the first computer being configurable to receive a configuration setting defining the operational metric information to be logged, the first computer replicating the configuration setting to the plurality of members (Abstract, lines 4-11);

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- any of the plurality of members are configurable to receive a configuration setting defining the operational metric information to be logged (Abstract, line 8);
- the performance gathering and aggregation system being operable to aggregate valid operational metric data and compensate for invalid operational metric data (via 55);
- the gathering and aggregation system being further adapted to provide a unified result set of operational metric data for a single member (via 70, 80);
- a configuration consumer (170) component operable to determine settings in the member specific configuration settings and log performance metric information based on the settings (column 8, lines 1-67);
- the configuration consumer component being notified of changes in the member specific configuration settings and being operable to access these changes through a configuration store (answer area 600, address space 150);
- the configuration consumer component being operable to access a configuration store to create a global list containing performance metrics to be logged to a data store (90) (data records are global since they can be accessed by different modules, Fig. 1);
- monitoring and storing performance metrics at a plurality of members (1230);
- querying at least one operational metric from the plurality of members (1270);
- aggregating the at least one performance metric from the plurality of members to form a unified result set (1250);

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- receiving a request from a requestor (1120, 1220) for a performance metric for the entity prior to the step of querying and returning the unified result step (Figs. 11, 12);
- aggregating the performance metric over time at each of the plurality of members after the step of monitoring and prior to the step of querying (1250 is after 1230 and before 1270, Fig. 12).

### ***Allowable Subject Matter***

4. Claims 5, 8, 22-25, 34, and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Reasons For Allowance***

5. The combination or method as claimed wherein a performance monitoring system comprising the time aggregation component aggregating member specific performance metrics data into data of larger time periods and larger resolutions by taking one of an average, a minimum, a maximum, a last and a weighted average of performance metrics data of a first time period and first resolution to evaluate performance metric data of a consecutive time period and consecutive resolution (claims 5, 8) or a metric consumer component communicatively coupled to the configuration consumer component wherein the metric consumer component accesses

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the global list and retrieves performance metric data from a metric source based on the performance metrics in the global list and logs the performance metric data to the data store (claim 22) or dynamically updating the logging of performance metric data at each of the plurality of members based on any changes in the performance metric settings (claims 34, 37) is not disclosed, suggested, or made obvious by the prior art of record.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Salzberg et al. (US 2003/0086536) discloses metrics-related testing of a support system (Fig. 1).

Hendrickson et al. (2002/0069037) discloses a system and method for measuring performance metrics of a wireless device (Fig. 2a).

### ***Contact Information***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nghiem whose telephone number is (703) 306-3445. The examiner can normally be reached on M-H from 6:30AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached at (703) 308-3126. The fax phone numbers for



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the organization where this application or proceeding is assigned are (703) 308-7724 for regular communications and (703) 308-5841 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

0956.

A handwritten signature in black ink, appearing to read 'Michael Nghiem', written over the printed name.

**MICHAEL NGHIEM  
PRIMARY EXAMINER**

Michael Nghiem

August 30, 2003